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JOSEPH R. TOMELLERI

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

JOSEPH R. TOMELLERI,)	Case Number: 3:19-cv-03162-RS
)	
Plaintiff,)	
)	
vs.)	JOINT CASE MANAGEMENT
)	STATEMENT & [PROPOSED] ORDER
TEESPRING, INC.,)	
)	
Defendant.)	

The parties to the above-entitled action jointly submit this JOINT CASE MANAGEMENT STATEMENT & PROPOSED ORDER pursuant to the Standing Order for All Judges of the Northern District of California and Civil Local Rule 16-9.

1. Jurisdiction & Service

The parties do not dispute the court's subject matter jurisdiction over Plaintiff's claims. Plaintiff's Complaint names additional defendants as John Does. Plaintiff anticipates substituting those parties for the actual legal persons when their identities become known.

2. Facts

1
2 Plaintiff is a fresh water fish illustrator in Leawood, Kansas. Plaintiff's portfolio of
3 illustrations contains over a thousand individual illustrations of species from North America.
4 Plaintiff, as of the date of this Joint Case Management Statement has discovered over the
5 unauthorized use of sixteen (16) of his illustrations on Defendant Teespring's website.

6 Teespring disputes that it has engaged in any infringement of Plaintiff's alleged intellectual
7 property. Teespring, headquartered in San Francisco, provides an online print-on-demand
8 service at www.teespring.com where individual artists and creators can upload their designs
9 and have them printed on t-shirts and similar apparel. Teespring prohibits infringement on its
10 service and requires users to "represent and warrant that [they] own or are the licensee[s] of all
11 trademark rights, copyrights, rights of publicity and other intellectual property or other
12 proprietary rights necessary to create and conduct [a] campaign." Teespring also responds
13 expeditiously to notices of claimed infringement submitted under the Digital Millennium
14 Copyright Act, 17 U.S.C. § 512(c) ("DMCA") and terminates the accounts of repeat infringers
15 in appropriate circumstances.

16 Information about the John Doe defendants is limited or non-existent at this time.

17 3. Legal Issues

18 Plaintiff's Summary of Key Legal Issues

19 Plaintiff believes there are no material disputed facts on issues related to copying of his
20 copyrighted works identified in the Complaint. Therefore, the sole legal issue is the amount of
21 damages under 17 U.S.C. § 504 for the copyright infringement claim.

22 For the DMCA violations alleged in Plaintiff's Complaint, there are issues related to: the
23 extent of copyright management information accompanying the image files upload to
24 Defendant Teespring's website; the number of times that copyright management information
25 was removed and/or manipulated; the copyright management information that replaced
26 Plaintiff's copyright management information; and damages under 17 U.S.C. § 1203.

1 Defendant's Summary of Key Legal Issues

- 2 • Are Plaintiff's federally registered copyrights valid?
- 3 • Does Plaintiff own protectable rights in the works at issue?
- 4 • Did Teespring infringe any of Plaintiff's intellectual property rights?
- 5 • Did Teespring willfully infringe any of Plaintiff's intellectual property rights?
- 6 • Is Teespring immune from suit under the safe harbors provided by the Digital
- 7 Millennium Copyright Act or other law?
- 8 • Are damages appropriate, and, if so, whether actual damages, profits, or statutory
- 9 damages are the proper measure of damages?
- 10 • Is any party entitled to attorneys' fees and costs, and, if so, for what claims and in what
- 11 amount?
- 12 • Is permanent injunctive relief appropriate?

13 4. Motions

14 There are no current motions before the Court. The parties anticipate the entry of a

15 protective order as discovery progresses to protect sensitive and proprietary information.

16 5. Amendment of Pleadings

17 Plaintiff anticipates amending its pleadings to identify the John Does named in this lawsuit.

18 Plaintiff also anticipates amending its pleadings to add additional defendants that use

19 Plaintiff's works on Defendant Teespring's website as Plaintiff continues to monitor Defendant

20 Teespring's website for continued uses of his works and/or additional uses of his works.

21 6. Preservation of Evidence

22 The parties have reviewed the Guidelines Relating to the Discovery of Electronically

23 Stored Information ("ESI Guidelines"). The parties hereby confirm they have met and

24 conferred pursuant to Fed. R. Civ. P. 26(f) regarding reasonable and proportionate steps taken

25 to preserve evidence relevant to the issues reasonably evident in this action.

26 7. Disclosures

27 The parties have not yet exchanged their Rule 26(a) Initial Disclosures but agree to provide

each other with their disclosures by February 28, 2020.

8. Discovery

The parties have not engaged in any formal discovery to date but have informally exchanged information. The parties do not foresee any need to expand or restrict the scope of discovery. Further, the parties anticipate eight (8) months as sufficient time for discovery.

9. Class Actions

This is not a class action lawsuit.

10. Related Cases

Per the Court's order of December 4, 2019 (Doc. 19), this case is related to the following actions:

Stay Frosty Enterprises, LLC v. Teespring, Inc., No. 19-cv-04607;

Olenick v. Teespring, Inc., No. 19-cv-06851; and

Blackman v. Teespring, Inc., No. 19-cv-01494.

11. Relief

Plaintiff seeks relief under 17 U.S.C. § 504 and 17 U.S.C. § 1202. Plaintiff can elect either actual damages or statutory damages, but Plaintiff is not yet prepared to make that election. Assessment of actual damages under § 504 is subject to further information in possession of Defendant Teespring. There are currently sixteen (16) works with a commensurate sixteen (16) calculations of statutory damages under 17 U.S.C. § 504(c). Plaintiff's claims for false copyright management information under § 1202 is subject to further information in possession of Defendant Teespring. Plaintiff also seeks his costs and attorney fees under 17 U.S.C. § 505 and 17 U.S.C. § 1203.

Defendant denies Plaintiff is entitled to any relief in this action.

12. Settlement and ADR

The parties have engaged in settlement negotiations. The parties have discussed possible private mediators and the district's magistrate judges as mediators for this matter. The parties were not able to find a mutually agreeable date.

1 13. Consent to Magistrate Judge for All Purposes

2 Whether all parties will consent to have a magistrate judge conduct for all further proceedings
3 including trial and entry of judgment. YES ____ NO X

4 14. Other References

5 This case is not suitable for reference to binding arbitration, a special master, or the Judicial
6 Panel on Multidistrict Litigation.

7 15. Narrowing of Issues

8 The parties are unable to narrow any issues related to this action presently.

9 16. Expedited Trial Procedure

10 The parties do not believe there is a need to expedite this action under General Order 64.

11 17. Scheduling

12 The parties agree on the current dates:

13 Initial ADR session –

14 The parties propose an ADR cutoff date of June 30, 2020.

15 Designation of Experts

16 Parties with the burden of proof shall designate experts within six (6)
17 months of the discovery period. Rebuttal experts shall be designated
18 thirty (30) after the initial expert disclosure.

19 Discovery Cutoff –

20 Discovery cutoff shall be eight (8) months from when the Court enters
21 this order.

22 Hearing of Dispositive Motions

23 The hearing of dispositive motions shall occur sixty (60) days before
24 trial.

25 Pretrial Conference

26 The pretrial conference shall occur as soon as the Court deems
27 appropriate.

1 Trial

2 The parties anticipate a trial length of four (4) to five (5) days.

3 18. Trial

4 The parties have demanded a jury trial for this matter on all issues so triable. The expected
5 length of the trial for this matter is four (4) to five (5) days.

6 19. Disclosure of Non-party Interested Entities or Persons

7 Each party has filed its Certification of Interested Entities or Persons" as required by Civil
8 Local Rule 3-15. Other than the parties themselves, no other persons or entities are known to
9 have either: (i) a financial interest in the subject matter in controversy or in a party to the
10 proceeding; or (ii) any other kind of interest that could be substantially affected by the outcome
11 of the proceeding.

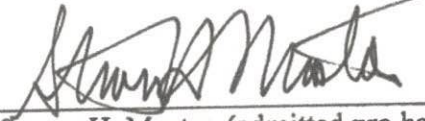
12 20. Professional Conduct

13 All attorneys of record for the parties have reviewed the Guidelines for Professional
14 Conduct for the Northern District of California.

15 21. Other

16 The parties are unaware of other matters that may facilitate the just, speedy, and
17 inexpensive disposition of this matter.

18
19 Dated:


Steven H. Mustoe (admitted pro hac vice)
EVANS & DIXON, LLC

20
21 Dated: 2-6-20


Gregg Matson
McANDREWS, ALLEN & MATSON, P.C.

22
23
24 Dated:


Jamie Otto
WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

CASE MANAGEMENT ORDER

The above JOINT CASE MANAGEMENT STATEMENT & PROPOSED ORDER is approved as the Case Management Order for this case and all parties shall comply with its provisions. [In addition, the Court makes the further orders stated below:]

IT IS SO ORDERED.

Dated:

HONORABLE RICHARD SEEBORG
UNITED STATES DISTRICT COURT JUDGE